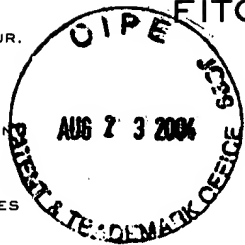


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ALL OTHERS LIMITED TO FEDERAL COURTS  
AND AGENCIES

Commissioner of Patents  
U.S. Patent and Trademark Office  
2011 South Clark Place  
Customer Window, **MS Patent Ext.**  
Crystal Plaza Two, Lobby, Room 1B03  
Arlington, VA 22202

Re: Petition for Correction of Patent Term Adjustment Calculation  
Appl. No.: 09/910,757  
Filed: July 24, 2001  
Title: **The Translation Enhancer Element of the  
Human Amyloid Precursor Protein Gene**  
Inventor(s): Rogers, Jack  
Atty. Dkt.: 7570/73233 (81994/282402)

Dear Sir:

The following documents are being forwarded herewith for appropriate action by the U.S. Patent and Trademark Office:

1. Petition for Correction of Patent Term Adjustment Calculation Under 37 C.F.R. § 1.705(d) with Exhibit A attached; and
2. Return postcard.

The Director is hereby authorized to charge the fee in the amount of \$200.00 for the filing of this petition to our Deposit Account No. 06-1135 under Order No. 7570/73233. The Director is also authorized to charge any fee deficiency with respect to the Issue Fee and any other fee required in connection with the present case, or credit any overpayment, to our Deposit Account No. 06-1135 under Order No. 7570/73233.

Commissioner of Patents  
August 23, 2004  
Page 2

It is respectfully requested that the enclosed postcard be stamped with the date the enclosed documents are received by the PTO and that it be returned as soon as possible.

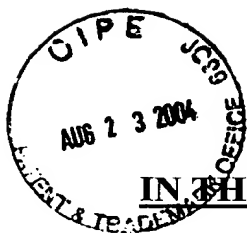
Very truly yours,

FITCH, EVEN, TABIN & FLANNERY

A handwritten signature in black ink, reading "Michael A. Sanzo". The signature is written in a cursive, flowing style.

Michael A. Sanzo  
Reg. No. 36,912  
Attorney for Applicant

MAS:ct  
Enclosures



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re patent application of:

Rogers, Jack

Appl. No.: 09/910,757

Filed: July 24, 2001

For: **The Translation Enhancer Element  
of the Human Amyloid Precursor  
Protein Gene**

**Confirmation No.: 4882**

Art Unit: 1647

Examiner: S. Turner

Atty. Dkt. 7570/73233  
(Formerly 81994/282402)

**Petition for Correction of Patent Term Adjustment Calculation  
Under 37 C.F.R. § 1.705(b)**

Commissioner for Patents  
U.S. Patent and Trademark Office  
220 20<sup>th</sup> Street South  
Customer Window, **MS Patent Ext.**  
Crystal Plaza Two, Lobby, Room 1B03  
Arlington, VA 22202

Sir:

Applicant has received a Determination of Patent Term Adjustment Under 35 U.S.C. 1554(b) that was mailed by the U.S. Patent and Trademark Office on July 26, 2004. This indicates that Applicant is entitled to 193 days of extension on his patent term. However, Applicant believes that this is incorrect and that he is actually entitled to 245 days extension. The basis for Applicant's conclusion is set forth below.

**I. Chronology of Relevant Prosecution Dates**

July 24, 2001: Application filed.

September 23, 2002: PTO mails Notification to Correct Sequence Listing. Applicant does not believe that this mailing should have any effect on patent term.

October 23, 2002: Applicant files Reply. This should not affect patent term.

October 31, 2002: Applicant files a Preliminary Amendment. Again, Applicant does not believe this filing should have any effect on term.

- September 4, 2003: PTO mails first substantive Office Action rejecting claims. This occurred more than 14 months after the filing of the application. Applicant believes that, as a result, there is the potential addition of term due to PTO delay of the period from September 24, 2002 (14 months after filing) until September 4, 2003 (the date the first Office Action was mailed. Applicant calculates this to be 345 days.
- November 17, 2003: Applicant files response to first Office Action. This was filed within three months of the date the first Office Action was mailed, and therefore should not result in any reduction in term.
- February 26, 2004: Second Office Action sent by the PTO. This was within four months of the filing of Applicant's response, and therefore should not affect term.
- May 6, 2004: Applicant files response to second Office Action. This was filed within three months of the mailing date of the second Office Action, and therefore should not affect patent term adjustment.
- July 26, 2004: Notice of Allowance mailed by the PTO. This was mailed within four months of Applicant's response, and therefore should not result in any modification of term.

## **II. Statement of Relevant Facts**

Under 37 C.F.R. § 1.702(a)(1), the Patent Office must act on an application within 14 months of its filing date. Delay extending beyond this period results in patent term extension. In the present case, 14 months from the date of filing was up on September 24, 2002. A first substantive Office Action was not mailed until September 4, 2003. Since there do not appear to have been any other events either adding to or reducing term adjustment, Applicant should be entitled to a period of time of extension from September 25, 2002 until September 4, 2003. Applicant calculates this to be a total of 345 days as follows:

<b>Month</b>	<b>Number of Days of Extension</b>
September 2002	6
October 2002	31
November 2002	30

Month	Number of Days of Extension
December 2002	31
January 2003	31
February 2003	28
March 2003	31
April 2003	30
May 2003	31
June 2003	30
July 2003	31
August 2003	31
September 2003	4

Applicant has checked the PAIR website and the copy of the portion of the site dealing with term adjustment for the present application is enclosed herewith as Exhibit A. This appears to indicate that the PTO is liable for prosecution delay extending from the initial filing date of July 24, 2001 up until the mailing of the first non-final action on September 4, 2003. However, Applicant submits that this is an error since delay on the part of the PTO would not have begun until 14 months after the initial filing date and the number ultimately calculated of 193 days is incorrect.

### **III. Statement Regarding Terminal Disclaimers**

The present application is not subject to a Terminal Disclaimer.

### **Conclusion**

Based upon the above considerations, Applicant respectfully requests reconsideration of the patent term adjustment that should be available for the present claims. As discussed above, Applicant believes that this should be for a total of 245 days.

The Director is hereby authorized to charge our Deposit Account No. 06-1135 \$200 for the fee set forth in 37 C.F.R. § 1.18(e) under Order No. 7570/73233. The Director is hereby authorized to charge any fee deficiency or credit any overpayment to the same Deposit Account number under the same order number.

If, in the opinion of the Examiner, a phone call may help to expedite this matter, the Examiner is invited to call Applicant's undersigned attorney at (202) 419-7013.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

By: Michael A. Sanzo

Michael A. Sanzo

Reg. No. 36,912

Attorney for Applicant

Date: August 20, 2004  
1801 K St., NW, Suite 401L  
Washington, DC 20006  
(202)419-7013

Printer Friendly

09/910,757 TRANSLATION ENHANCER ELEMENT OF THE HUMAN AMYLOID PRECURSOR PROTEIN GENE

## Patent Term Adjustment History

Patent Term Adjustment (PTA) for Application Number: 09/910,757			
			Days
Filing or 371(c) Date:	07-24-2001	USPTO Delay (PTO):	193
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay(APPL):	0
Post-Issue Petitions (days):	+0	Total PTA:	193
USPTO Adjustment(days):	+0	Explanation Of Calculations	
Patent Term Adjustment History			
Date	Contents Description	PTO(Days)	APPL (Days)
07-26-2004	Mail Notice of Allowance		
07-26-2004	Issue Revision Completed		
07-26-2004	Notice of Allowance Data Verification Completed		
07-26-2004	Case Docketed to Examiner in GAU		
07-26-2004	Notice of Allowability		
05-13-2004	Date Forwarded to Examiner		
05-06-2004	Response after Non-Final Action		
05-06-2004	Workflow incoming amendment IFW		
02-26-2004	Mail Non-Final Rejection		
02-25-2004	Non-Final Rejection		
12-16-2003	IFW Amended case processing Complete		
12-16-2003	Date Forwarded to Examiner		
11-17-2003	Response after Non-Final Action		
09-04-2003	Mail Non-Final Rejection	193	
08-25-2003	Non-Final Rejection	↑	
11-14-2002	CRF Is Good Technically / Entered into Database	↑	
10-29-2002	Correspondence Address Change	↑	
10-29-2002	Date Forwarded to Examiner	↑	
10-23-2002	Response to a Letter to Comply with the Sequence Rules	↑	
09-23-2002	Mail Letter Requiring CRF (Unreadable, Non-Compliant, Not Submitted)	↑	
09-23-2002	CRF Diskette Unreadable / Did Not Comply / Required but Not Submitted	↑	
09-10-2001	Case Docketed to Examiner in GAU	↑	
08-30-2001	Application Dispatched from OIPE	↑	
08-28-2001	Correspondence Address Change	↑	
08-01-2001	IFW Scan & PACR Auto Security Review	↑	
08-01-2001	IFW Scan & PACR Auto Security Review	↑	
08-01-2001	IFW Scan & PACR Auto Security Review	↑	

08-01-2001	IFW Scan & PACR Auto Security Review	↑
08-01-2001	IFW Scan & PACR Auto Security Review	↑
07-24-2001	Preliminary Amendment	↑
07-24-2001	Initial Exam Team nn	↑

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